

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 346 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ISMAIL FAKIRBHAI PATEL

Versus

NAVSARI COTTON AND SILK MILLS LTD

Appearance:

MR RN SHAH for MR NR OZA for Appellant
MR ARUN MEHTA for MRS KETTY A MEHTA for Respondent
Nos. 2, 3, 3/2, & 3/4.
Ms.KN VALIKARIMWALA for Respondent No.3/1.

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 20/01/97

ORAL JUDGEMENT

1. The present appeal is the one under section 100 CPC, wherein the appellant is the original plaintiff no.1, the respondent nos. 1 & 2 are defendant nos. 1 & 2 respectively, and the respondent no.3 is the original plaintiff no.2.

2. Before proceeding with the merits of the present

appeal, it is necessary to examine the scope and ambit of the same.

3. The scope of section 100 CPC, and the powers of the High Court while exercising jurisdiction as a second appellate court are by now well defined and require no detailed discussion. The Supreme Court has, in the case of Ramaswamy Kalingaryar Vs. Mathayan Padayachi (AIR 1992 Supp (1) SCC page 712), and in the case of Parsini (dead) through Legal Representatives Vs. Atma Ram (AIR 1996 SC 1558), clearly reiterated the principle that the High Court cannot, while functioning as a second appellate court under section 100 CPC, upset the findings of fact recorded by the lower appellate court by reassessing the evidence, or reassess the qualitative value of such evidence on record, and thus cannot reverse such findings of fact. In fact, the High Court cannot interfere with such findings of fact even by examining or reappreciating the evidence from the aspect of "sufficiency of proof".

4. The relevant and pertinent facts can be briefly summarized as under.

5. The plaintiffs (being plaintiff nos. 1 & 2) filed two separate suits against the same defendants namely; Regular Civil Suit Nos. 86/72 and 88/72 in the court of Civil Judge (J.D.), Navsari. The first suit namely; Regular Civil Suit No.86/72 was filed claiming relief of a prohibitory injunction against the defendants, restraining the defendants from entering into the suit property, and from taking the fruits of the trees therein, grass etc., and from disturbing or interfering with the plaintiffs' possession in respect of the suit property.

5.1 The other suit namely Regular Civil Suit No.88/72 was filed by the very same plaintiffs against the very same defendants, for obtaining vacant and peaceful possession of the suit property let out to the defendants as monthly tenants.

5.2 It may be clarified that according to the plaintiffs, what was let out to the defendants as tenants was only a bungalow bearing municipal no. 342, together with the kitchen bearing municipal no.342/1, whereas the outhouses, the compound and the open land with fruit bearing trees, grass, etc. was not let out to the defendants. Thus, the cumulative effect of the two suits and the prayers made in the two suits clearly set out the stand of the plaintiff to the effect that in respect of

the suit property which were let out by the plaintiffs namely; the bungalow and the kitchen, the plaintiffs treated the defendants as tenants thereof and sought vacant and peaceful possession; whereas in respect of the outhouses, the compound, the open land etc. the plaintiffs treated the defendants as trespassers, and in respect of this specific property, sought prohibitory injunction against the defendant restraining them from preventing the plaintiffs from peaceful enjoyment of such properties.

5.3 For the purposes of the present decision, these suits will hereinafter be referred as the first suit and the second suit.

5.4 It may be noted at this stage that the trial court decreed both suits by a common judgment (which were consolidated by consent of the parties and common evidence was led by the parties in both the suits.) In substance, the trial court held that what was let out to the defendants was only the bungalow and the kitchen, and the outhouses, land etc. were not let out to the defendants, and that the defendants could not interfere with enjoyment and possession of the plaintiffs in respect of the outhouses and the open and appurtenant land thereto. Being aggrieved by the judgment and decrees in question, the original defendants preferred two Regular Civil Appeals namely Regular Civil Appeal Nos.7/77 and 13/77.

5.5 During the course of the appeal, it was urged that the original owner of the property namely; Yusuf Ibrahim Gardee had died, as also the original plaintiff no.1 namely; Mohammed Suleman Hans. The defendants as appellants of Regular Civil Appeal No.13/77 arising out of Regular Civil Suit No.88/72, failed to bring on record of the appeal the legal representatives, and as per order dated 17th December, 1980 passed in Regular Civil Appeal No.13/77, that appeal stood abated. The necessary consequence of the abatement of that appeal would be that the decree passed by the trial court in Regular Civil Suit No.88/72 would stand confirmed. In other words, a finding recorded by the trial court that the defendants were tenants in respect of only the bungalow and the kitchen stood confirmed, and cannot be the subject matter of the present appeal.

5.6 The lower appellate court thereafter examined the entire evidence on record, and on reappraisal of the same, upset the judgment and decree (of dismissal of the first suit passed by the trial court), and as a result

thereof, indirectly confirmed the status of the defendants as tenants in respect of not only the bungalow and the kitchen, but also in respect of the outhouses and the appurtenant land, as per the decree passed in the second suit.

5.7 However, as already observed hereinabove, since the other appeal has abated, the present appeal arising from the injunction suit is required to be considered.

5.8 As already discussed hereinabove, the scope of the present appeal is extremely limited, and inspite of the best efforts of learned counsel for the appellant, I am not persuaded to reappreciate the evidence so as to reach a conclusion contrary to the one reached by the lower appellate court. Even a plain reading of the points for determination raised by the lower appellate court, and findings recorded therein, indicate that the only questions involved are questions of fact, which can be and have been decided on a proper appreciation of evidence, and out of which no substantial question of law arises.

6. Learned counsel for the appellant has made earnest efforts to develop and extrapolate the grounds taken in the appeal memo as constituting substantial questions of law which arise in the present appeal. However, I am satisfied that no such question arises.

7. In view of the observations and findings as discussed hereinabove, the present appeal is accordingly dismissed. There shall be no order as to costs.

Amp/-